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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- - - - -X
UNITED STATES OF AMERICA 18-CR-6094(G)

vs.
CARLOS JAVIER FIGUEROA, Rochester, New York
Defendant. May 26, 2021
12:52 p.m.
- - - - -X

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE FRANK P. GERACI, JR.
UNITED STATES DISTRICT CHIEF JUDGE

JAMES P. KENNEDY, JR., ESQ.
United States Attorney
BY: ROBERT A. MARANGOLA, ESQ.
CASSIE M. KOCHER, ESQ.
Assistant United States Attorneys
500 Federal Building
Rochester, New York 14614
Appearing on behalf of the United States

PAUL J. VACCA, JR., ESQ.
One East Main Street, Suite 1000
Rochester, New York 14614
Appearing on behalf of the Defendant

ALSO PRESENT: Gabriela Loncar, Spanish Interpreter
Barbara Considine, Spanish Interpreter
Besayda Soto-Abbate, Spanish Interpreter

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I N D E X

WITNESS FOR THE GOVERNMENT

David Swain

Direct examination by Ms. Kocher

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Cross-examination by Mr. Vacca

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P R O C E E D I N G S

* * *

(WHEREUPON, the defendant is present; the jury is present).

12:52:45PM

GOVERNMENT'S WITNESS, DAVID SWAIN, SWORN

DIRECT EXAMINATION

THE CLERK: Please state your name and spell your last name for the record.

THE WITNESS: David Swain, S-W-A-I-N.

12:53:17PM

THE REPORTER: Thank you.

THE CLERK: There are microphone covers in here. Put one on each of those, please.

THE WITNESS: Of course. Thank you.

THE CLERK: You're welcome.

12:53:52PM

THE COURT: You may remove your mask since you're behind plexiglas. Thank you.

THE WITNESS: Thank you.

BY MS. KOCHER:

Q. Good afternoon.

12:53:58PM

A. Good afternoon.

Q. Could you please introduce yourself to the jury?

A. Hello. My name is David Swain. I'm a retired investigator with the Rochester Police Department.

Q. And when did you retire from the Rochester Police Department?

12:54:09PM

1 A. April 26th, 2018.

2 Q. And you were an investigator when you retired?

3 A. I was. I was assigned to the task force.

4 Q. What task force was that?

12:54:23PM 5 A. Association with ATF, Alcohol Tobacco and Firearms, and
6 Rochester Police Department.

7 Q. And how long were you an investigator with that task force
8 before you retired?

9 A. About a year.

12:54:32PM 10 Q. How long had you been an investigator with RPD?

11 A. Oh, nine years; and 21 years total.

12 Q. Okay. Before becoming an investigator, were you a police
13 officer?

14 A. That's correct.

12:54:50PM 15 Q. Investigator, can you explain some of the training you
16 received to become a police officer?

17 A. I went through the police academy -- that was several
18 months, and we received training throughout the academy
19 relative to law enforcement and, you know, vehicle and traffic
12:55:08PM 20 laws, violent crime laws, we got introduced to drug
21 identification and testing.

22 As I graduated from the police academy, I was
23 assigned as a patrol officer in the Genesee Section. During
24 that time I responded to 911 calls, conducted proactive work.

12:55:27PM 25 After several years on the road there I moved up to

1 Special Investigation as an undercover officer where we
2 conducted drug investigations. During my time there I was
3 fortunate enough to go to several schools sponsored by the DEA
4 or gang conferences.

12:55:51PM 5 I also during that time was fortunate to be a part
6 of numerous drug investigations, ultimately moving up to the
7 task force throughout my last year.

8 Q. What sort of crimes did you investigate as a part of that
9 task force?

12:56:09PM 10 A. The task force was a little bit more narrow than the SIS.
11 We were tasked with violent crimes, higher level drug
12 traffickers, gun traffickers, gun -- illegal gun possessions.

13 Q. Now, Investigator, I'd like to direct your attention back
14 to August 12th of 2015. What unit were you assigned to at
12:56:34PM 15 that time?

16 A. August 12th, 2015, I was in the Special Investigation
17 Section. I can't remember the acronym, I think it was the
18 west side unit.

19 Q. Okay. And you were an investigator at that time?

12:56:47PM 20 A. Yes, ma'am.

21 Q. Now, were you working on August 12th, 2015?

22 A. I was.

23 Q. What was your assignment that day?

24 A. My assignment was as an investigator to come in and
12:57:00PM 25 continue investigations into the current cases that we were

1 working.

2 Q. Okay. On that day in particular did you execute a search
3 warrant at any location?

4 A. We did. Myself and the rest of the team executed a search
12:57:12PM 5 warrant at 11 Burbank Street.

6 Q. Okay. I'd like to show you what's been received into
7 evidence as Exhibit 79. Do you recognize any of the homes
8 depicted in this photograph?

9 A. Yes, I don't know if the jury can see, but it's the middle
12:57:27PM 10 home, it has a white bottom and blue top, and it's right in
11 the middle, there's a green bush in front of it, and the
12 number 11 is on one of the columns.

13 Q. And is that the home that you executed a search warrant on
14 on August 12th, 2015?

12:57:40PM 15 A. It is.

16 Q. Okay. Now, you mentioned there were other officers there
17 assisting?

18 A. That's correct.

19 Q. What was your role in the search warrant team?

12:57:49PM 20 A. I was the affiant of the search warrant. So my role was
21 to collect the property, if there was any, and kind of
22 coordinate the particular case.

23 Q. Okay. Did there come a time that you collected evidence
24 from inside the home?

12:58:03PM 25 A. There was, yes.

1 Q. What were some of those items that you collected from
2 inside 11 Burbank Street upon searching?

3 A. I collected a fanny pack, which was located on the floor.
4 The fanny pack had cocaine, heroin and money in it. I
12:58:20PM 5 collected an additional plastic bag with additional cocaine
6 and heroin in it.

7 There were ledgers and I believe two additional
8 bags of cocaine in one of the areas. And I would have to
9 refer to my notes to remember the rest of it.

12:58:39PM 10 Q. Okay. Let me show you what's been received into evidence
11 as Exhibit 147. Do you recognize what this is a photograph
12 of?

13 A. I do.

14 Q. What is that?

12:58:50PM 15 A. That's one of the bags I collected that day that had
16 heroin and cocaine in it.

17 Q. Okay. Now, you mentioned you collected that item?

18 A. I did.

19 Q. How did you go about collecting it?

12:59:00PM 20 A. After the location is secured and individuals inside are
21 secured, we go around looking for evidence. Once the evidence
22 is located by individuals I'll go photograph it, collect it
23 into a plastic bag; and if it's suspected narcotics we'll test
24 it; if it's cash, the supervisor will collect it; and
12:59:20PM 25 ultimately the property gets turned into the Clerk's Office.

1 Q. Okay. When you turn it into the Clerk's Office, is that
2 the Property Clerk's Office?

3 A. That's correct.

4 Q. And is that a secure facility?

12:59:31PM 5 A. It is.

6 Q. And when you collected the item depicted in Exhibit 147,
7 did you put that in a sealed envelope or a sealed evidence bag
8 before turning it into the property clerk?

9 A. I did.

12:59:45PM 10 Q. Do you make -- or write any -- did you put any identifying
11 information on the evidence bag when you collect evidence?

12 A. We do.

13 Q. What was some of that information?

14 A. We'll put the case number, which is specific for this
01:00:01PM 15 particular case; we'll do a brief description; and then we'll
16 seal it and turn it in.

17 Q. Do you recall if the crime report number for this incident
18 was 15-210652?

19 A. I remember 15-210. If it's 652, I'll have to look at my
01:00:22PM 20 notes, yeah.

21 Q. Let me ask you to take a look at Exhibit 162 in front of
22 you. That should be one of those items on the ledge.

23 A. Yes, it's 210652, 15-210652.

24 Q. Do you recognize Exhibit 162, that bag in front of you?

01:00:48PM 25 A. Yes.

1 Q. What do you recognize that item to be?

2 A. This is the same property that was depicted in the photo
3 that I collected that day and put in the envelope and sealed
4 it.

01:00:59PM 5 Q. Okay. So the items contained in Exhibit 162 are the same
6 drugs that you photographed in Exhibit 147?

7 A. They appear the same. The bag is manipulated a little bit
8 with different markings on it from the original turn in that
9 day.

01:01:18PM 10 Q. Okay. So what is different about Exhibit 162 from when you
11 turned it into the Property Clerk's Office?

12 A. I don't know if the jury can see this, a yellow sticker up
13 top, the orange part right here, another orange part there,
14 and then this was not there the original day. This was added
01:01:35PM 15 since I've been gone.

16 **THE COURT:** When you refer to "this," what are you
17 speaking about?

18 **THE WITNESS:** I'm sorry, the blue tape on the
19 bottom.

01:01:41PM 20 **THE COURT:** Thank you.

21 **BY MS. KOCHER:**

22 Q. Other than the yellow sticker, that orange sticker, and
23 the blue lab tape at the bottom, does it appear to be in the
24 same or substantially the same condition as when you submitted
01:01:53PM 25 it to the property clerk that day?

1 A. Yes.

2 Q. Do the contents of Exhibit 162 appear to be in the same or
3 substantially the same condition?

4 A. They do.

01:02:03PM 5 Q. Next I'd like to show you Exhibit 154, which is a
6 photograph. Do you recognize what's in this photograph?

7 A. I do.

8 Q. What is it?

9 A. That's the fanny pack that was located at the location
01:02:19PM 10 that day and inside the fanny pack that's the drugs --
11 suspected drugs and cocaine and heroin that we located.

12 Q. Okay. So there is a pocket that's unzipped in the fanny
13 pack. Is that what you're referring to when you say inside
14 the fanny pack?

01:02:35PM 15 A. Correct.

16 Q. Did you also collect the fanny pack and the drugs that
17 were inside of it?

18 A. I did.

19 Q. If you could take a look at another item that should be in
01:02:43PM 20 front of you marked Exhibit 161? Do you recognize that item?

21 A. I do, this is the fanny pack that we collected that day.

22 Q. And does Exhibit 161 also include the drugs that were
23 inside of the fanny pack?

24 A. It does.

01:02:58PM 25 Q. Does the fanny pack and the drugs appear to be in the same

1 or substantially the same condition as when you collected it
2 that day?

3 A. They do.

4 Q. And how about the evidence bag that you secured those
01:03:14PM 5 items in, does the evidence bag appear to be in the same or
6 substantially the same condition?

7 A. It's different from that day; same markings I described
8 earlier, the yellow on top, the orange, the darker orange
9 there, the blue on the bottom.

01:03:29PM 10 Q. All right. So other than the -- the yellow sticker and
11 the blue tape, are those lab markings?

12 A. They appear to be, yes.

13 Q. And the orange sticker, is that a property clerk sticker?

14 A. Correct.

01:03:41PM 15 Q. Other than those does that item appear to be in the same
16 or substantially the same condition?

17 A. It does.

18 Q. Now, Investigator, I'd like to jump ahead a few years to
19 January 31st of 2018. Were you still working as an
01:04:02PM 20 investigator with the Rochester Police Department then?

21 A. I was.

22 Q. And were you assigned to the ATF task force at that time?

23 A. I was.

24 Q. On that day in particular were you working on an
01:04:14PM 25 investigation referred to as Operation Burbank Bust?

1 A. I was.

2 Q. And did there come a time on January 31st of 2018 that you
3 met with DEA Agent Bill Reichard?

4 A. I did.

01:04:26PM 5 Q. And how did you come to meet with him?

6 A. He met me at the Public Safety Building, that's our
7 downtown office.

8 Q. And did Special Agent Reichard bring you any item of
9 evidence that had been seized from a Postal package?

01:04:40PM 10 A. He did.

11 Q. And what was that?

12 A. It was 2 kilos of suspected cocaine.

13 Q. Do you know what package those 2 kilos were seized from?

14 A. Are you asking me the box from the post office?

01:04:56PM 15 Q. Right, do you know anything about that, the Postal
16 package? Who it was addressed to or anything?

17 A. I do. The Postal box was addressed to someone named
18 Mickael Grant, 4 Ritz Street.

19 Q. Okay. What did you do when Special Agent Reichard brought
01:05:12PM 20 you those 2 kilos of cocaine?

21 A. I secured them in a bag and turned them into the Property
22 Clerk's Office.

23 Q. And did you seal the bag?

24 A. I did.

01:05:21PM 25 Q. I'd ask you to take a look at Exhibit 397. Do you

1 recognize what that item is?

2 A. I do.

3 Q. What is it?

4 A. This is the suspected 2 kilos of cocaine that were seized
01:05:38PM 5 that day.

6 Q. Those are the kilos that Special Agent Reichard gave to
7 you?

8 A. Correct.

9 Q. How do you know those are the 2 kilos that Special Agent
01:05:46PM 10 Reichard gave to you back in January of 2018?

11 A. They appear to be the same and in the same bag I sealed,
12 and that's definitely my handwriting because it's atrocious.

13 Q. Okay. Does it have the unique case number on the
14 packaging as well?

01:06:05PM 15 A. It does.

16 Q. And you sealed that bag?

17 A. I did.

18 Q. Does your seal appear to be intact?

19 A. The seal on top is, they do have the blue tape on the
01:06:22PM 20 bottom, and the additional markings that we spoke about prior.

21 Q. Okay. But the way that you sealed it, is your seal still
22 intact?

23 A. Yes, my seal is still intact.

24 Q. Was the crime report number associated with that item
01:06:41PM 25 18-024083?

1 A. That's correct.

2 Q. Other than the yellow lab sticker and the blue lab tape,
3 does that item appear to be altered in any way?

4 A. No.

01:06:55PM 5 Q. It's in the same or substantially the same condition as
6 when you collected it from Special Agent Reichard?

7 A. Yes.

8 **MS. KOCHER:** Thank you, Investigator. I don't have
9 anymore questions.

01:07:11PM 10 **THE WITNESS:** Thank you.

11 **CROSS-EXAMINATION**

12 **BY MR. VACCA:**

13 Q. Investigator, were you involved in the execution of the
14 search warrant at the many different locations on January 29th
01:07:26PM 15 of 2018?

16 A. Are you asking me did I execute search warrants or --

17 Q. Yes. On that day?

18 A. I did not execute any search warrants, no.

19 Q. So that day were you in an advisory capacity or what was
01:07:43PM 20 your role?

21 A. Yes, that's approximately right. I was a case coordinator
22 that day.

23 Q. You didn't execute any of the search warrants, correct?

24 A. No, sir.

01:07:51PM 25 Q. Okay. Now, the items that the prosecutor just showed you,

1 are those items that you saw when they were turned into the
2 Clerk's Office, the custody office, or when did you first see
3 these items?

4 A. Which items are you talking about? The one from the
01:08:08PM 5 warrant or the one from the Postal warrant?

6 Q. The one from the Postal warrant.

7 A. So your question -- I wasn't there for the warrant. The
8 items were turned over to me.

9 Q. Okay. So you didn't search any of the Postal boxes?

01:08:22PM 10 A. No, sir.

11 Q. Okay. Did you search any other boxes in relation to this
12 case?

13 A. Did I search any other boxes on that day?

14 Q. On that day.

01:08:35PM 15 A. No, sir.

16 Q. Okay. Now, you met with Special Agent Reichard on what day
17 is that again?

18 A. January 31st.

19 Q. That was three days after the many busts, correct?

01:08:56PM 20 A. I believe two was -- the many busts were the 29th; then we
21 met with him on the 31st.

22 Q. Okay. What is it that you did at 4 Ritz Street?

23 A. Pardon me?

24 Q. 4 Ritz Street.

01:09:12PM 25 A. That's where it was addressed to.

1 Q. To a Mickael Grant, correct?

2 A. Mickael Grant.

3 **MR. VACCA:** Okay, thank you very much, sir.

4 **THE WITNESS:** Thank you.

01:09:22PM

5 **MS. KOCHER:** I don't have any further questions,
6 Your Honor.

7 **THE COURT:** Thank you very much. You may step down.

8 **THE WITNESS:** Thank you.

9 (WHEREUPON, the witness was excused).

10 * * *

11 **CERTIFICATE OF REPORTER**

12

13 In accordance with 28, U.S.C., 753(b), I certify that
14 these original notes are a true and correct record of
15 proceedings in the United States District Court for the
16 Western District of New York before the Honorable Frank P.
17 Geraci, Jr. on May 26th, 2021

18

19 S/ Christi A. Macri

20 Christi A. Macri, FAPR-RMR-CRR-CSR(CA/NY)
21 Official Court Reporter

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